TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED	2
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	2
REASONS WHY THE WRIT SHOULD NOT BE GRANTED	6
I. The Court of Appeals Correctly Decided That Regulation Q Constitutes Social and Economic Regulation Which Rationally Serves Legitimate Ends and Is Therefore Constitutional	6
(A) Regulation Q Involves Neither a Suspect Classification Nor a Fundamental Right and Was Properly Tested Under the Rational Basis Test	7
(B) The Court of Appeals Correctly Applied the Rational Basis Test	9
II. The Standard for Determining "State Action" Which Petitioners Suggest Was Rejected by This Court During Its Last Term and There Is No Reason for the Court Again to Review This Question	11
CONCLUSION	14
ADDENDUM	17
AFFIDAVIT OF SERVICE	20

TABLE OF CASES

Dandridge v. Williams, 397 U.S. 471 (1970)	9, 10
Doe v. Bellin Mem. Hosp., 479 F.2d 756 (7th Cir. 1973)	13
Douglas v. California, 372 U.S. 353 (1964)	8

PAGE

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966) 8

Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974) 13

Jackson v. Norton-Childrens' Hospitals, Inc., 487 F.2d 502 (6th Cir. 1973) 13

McDonald v. Board of Election Commissioners, 394 U.S. 802 (1969) 8

Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972) .. 13

Powe v. Miles, 407 F.2d 73 (2d Cir. 1968) 13

Richardson v. Belcher, 404 U.S. 78 (1971) 6, 9

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 7, 8, 9, 10

Schlib v. Kuebel, 404 U.S. 357 (1971) 7, 8, 10

Shapiro v. Thomasson, 394 U.S. 618 (1969) 8

Stinson v. Finch, 317 F. Supp. 581 (N.D. Ga. 1970) .. 12

United States v. Kras, 409 U.S. 434 (1973) 7, 8

Williams v. Rogers, 449 F.2d 513 (8th Cir. 1973) .. 12

OTHER AUTHORITIES
U. S. CONSTITUTION

U. S. Const. Amendment V 2, 4, 17

U. S. Const. Amendment XIV 2, 4, 17

STATUTES

Federal Reserve Act § 19(j), 12 U.S.C.A. § 371b (Supp. 1975) 2, 3, 17

Civil Rights Act of 1871, 42 U.S.C.A. §§ 1983, 1985 (1975) 2, 4, 12, 20

Act of September 21, 1966, Pub. L. 89-597, 80 Stat. 823 3

Act of October 15, 1973, Pub. L. 93-123, 87 Stat. 449 . 3, 4

REGULATIONS

PAGE

Regulation Q, Interest on Deposits, 12 C.F.R. § 217.7 (1974) 2, 18

31 Fed. Reg. 12676 (1966) 3

33 Fed. Reg. 6233 (1968) 3

35 Fed. Reg. 1156 (1970) 3

35 Fed. Reg. 10501 (1970) 3

38 Fed. Reg. 13728 (1973) 3

38 Fed. Reg. 18641 (1973) 3

38 Fed. Reg. 19908 (1973) 3

38 Fed. Reg. 20442 (1973) 3

38 Fed. Reg. 29461 (1973) 3

39 Fed. Reg. 43056 (1974) 3

39 Fed. Reg. 43618 (1974) 3

LEGISLATIVE HISTORY

Senate Report (Banking and Currency Committee) No. 1601, Sept. 14, 1966, 1966 U.S. Code Cong. & Adm. News (2) 2994-3001 (89th Cong. 2d Sess.) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-242

DONALD K. GEARHEART and
RICHARD KURTZ,

Petitioners,

v.

FEDERAL RESERVE BANK OF CLEVELAND,
FEDERAL RESERVE BOARD,
THE FIRST NATIONAL BANK OF CINCINNATI,
FIFTH THIRD BANK,
CENTRAL TRUST COMPANY,
PROVIDENT BANK,
SOUTHERN OHIO BANK,
NORTH SIDE BANK AND TRUST CO.,
ARTHUR F. BURNS, Chairman,
Board of Directors of the Federal Reserve System,
GEORGE W. MITCHELL, Vice Chairman,
Board of Directors of the Federal Reserve System,
J. DEWEY DANNE, Member,
Board of Directors of the Federal Reserve System,
JEFFREY M. BUCHER, Member,
Board of Directors of the Federal Reserve System,
ANDREW F. BRIMMER, Member,
Board of Directors of the Federal Reserve System,
JOHN E. SHEEHAN, Member,
Board of Directors of the Federal Reserve System,
ROBERT C. HOLLAND, Member,
Board of Directors of the Federal Reserve System,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENTS, THE FIRST NATIONAL BANK OF CINCINNATI, FIFTH THIRD BANK, CENTRAL TRUST COMPANY, PROVIDENT BANK, SOUTHERN OHIO BANK, AND NORTH SIDE BANK AND TRUST CO., IN OPPOSITION TO THE PETITION

OPINIONS BELOW

The opinion of the District Court has not been reported. It appears as Appendix A in the Appendix to the Petition.

The opinion of the Court of Appeals for the Sixth Circuit has not been reported in official reports. It appears at 1975 CCH Trade Cases ¶ 60,328 and as Appendix B in the Appendix to the Petition.*

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The constitutional provisions, statutes and regulations involved are the United States Constitution, Amendments V and XIV; the Federal Reserve Act of 1913, § 19(j), as amended, 12 U.S.C.A. § 371b (Supp. 1975), and Regulation Q of the Federal Reserve Board adopted thereunder, 12 C.F.R. § 217.7 (1975); and the Civil Rights Act of 1871, 42 U.S.C.A. § 1983. The pertinent text of each is set forth in the Addendum to this Brief at pages 17 through 21 hereof.

QUESTIONS PRESENTED

1. Did the Court of Appeals correctly decide that, in order to protect the home mortgage market, assure liquidity for businesses, and otherwise implement the nation's monetary policy, it is constitutionally permissible for Congress to authorize and the Federal Reserve Board to prescribe limitations upon interest rates for bank deposits which limits vary with the amount on deposit?

2. Does the mandatory compliance of Respondent Banks with the federally adopted and federally enforced interest rate limitations constitute "state action" of the state of Ohio within the meaning of 42 U.S.C.A. § 1983?

STATEMENT OF THE CASE

In 1933, by amendment to the Federal Reserve Act of 1913, Congress empowered the Federal Reserve Board to

---

* Each opinion shall be referred to herein by citing the Appendix to the Petition and pertinent page thereof.

establish maximum rates of interest which member banks of the Federal Reserve System may pay on time and savings deposits. 48 Stat. 182. A further amendment adopted in 1966 authorized the Federal Reserve Board to "prescribe different rate limitations . . . for deposits of different amounts. . . ." 12 U.S.C.A. § 371b (Supp. 1975), Pub. L. 89-597, 80 Stat. 823. The legislative history reflects that the 1966 amendment was adopted to enhance the flexibility of the Federal Reserve Board in implementing the nation's monetary policy, protecting the funds available for home mortgage loans, and otherwise regulating the flow of funds within the economy. 1966 U.S. Code Cong. & Adm. News (2), 2994-3001 (89th Cong. 2d Sess.).

Pursuant to this statutory authority, the Federal Reserve Board has from time to time modified the interest rate limitations prescribed by Regulation Q to affect the flow of savings. 31 Fed. Reg. 12676 (1966); 33 Fed. Reg. 6233 (1968); 35 Fed. Reg. 1156 (1970); 35 Fed. Reg. 10501 (1970); 38 Fed. Reg. 13728 (1973); 38 Fed. Reg. 18641 (1973); 38 Fed. Reg. 19908 (1973); 38 Fed. Reg. 20442 (1973); 38 Fed. Reg. 29461 (1973); 39 Fed. Reg. 43056 (1974); 39 Fed. Reg. 43618 (1974).

As a part of this function, effective June 24, 1970, the Federal Reserve Board removed the interest limitations on certificates of deposit of $100,000 or more with maturities of thirty to eighty-nine days. 35 Fed. Reg. 10501 (1970). Thereafter, on May 24, 1973, the Federal Reserve Board lifted the interest ceiling on all single maturity certificates of deposit of $100,000 or more. 38 Fed. Reg. 13728 (1973).

The desirability of permitting higher interest on large denomination certificates of deposit was expressly recognized by Congress when it enacted the 1966 amendment. 1966 U.S. Code Cong. & Adm. News (2), at 2999. On the other hand, by joint resolution adopted on October 15, 1973, Congress has affirmed that the continued restriction of

interest payable on deposits of less than $100,000 is in the national interest:

> In carrying out their respective authorities under the Act of September 21, 1966 . . . the Board of Governors of the Federal Reserve System . . . shall take action to limit the rates of interest . . . which may be paid on time deposits of less than $100,000. . . . Pub. L. 93-123, 87 Stat. 449.

The Respondent Banks herein are each members of the Federal Reserve System. As such, each is forbidden from paying interest on deposits of under $100,000 in excess of the maximum rates established by Regulation Q.

Each Petitioner herein has purchased a $10,000 certificate of deposit from Respondent Provident Bank. Regulation Q establishes the maximum rate of interest which Provident Bank may pay on those certificates. Petitioners do not claim to be receiving less than the maximum.

Petitioners filed this purported class action on September 14, 1973.[1] Petitioners' Amended Complaint[2] asserts that the Respondent Federal Reserve Board's action removing interest limitations upon certificates of deposit of $100,000 or more, while maintaining interest limitations for smaller deposits, violates the rights of Petitioners and others having deposits of less than $100,000 to due process and equal protection of the laws. Petitioners assert, moreover, that Respondent Banks' compliance with the interest rate limitations of Regulation Q subjects these banks to liability under the Civil Rights Act of 1871, three antifraud

[1] The District Court did not rule upon whether this suit is maintainable as a class action. By letter dated July 16, 1974 to the parties the District Court expressed grave concern as to whether this suit could feasibly be maintained as a class action.

[2] On November 15, 1973, each Respondent Bank moved to dismiss the original Complaint. Before those motions were ruled upon, Petitioners tendered an Amended Complaint. With leave of court the motions to dismiss of Respondent Banks were deemed refiled and directed to the Amended Complaint. The discussion herein is limited to the Amended Complaint.

sections of the federal securities laws, and four separate sections of the federal antitrust laws.

Petitioners' Amended Complaint named fifteen defendants, including the Federal Reserve Board, the Federal Reserve Bank of Cleveland, and the seven directors of the Federal Reserve System. It also named the six Respondent Banks, all located in Cincinnati, Ohio, as defendants. Petitioners do not and cannot allege that either of them has had dealings with any of the Respondent Banks other than Provident Bank.

In short, Petitioners' Amended Complaint makes shotgun allegations that Regulation Q violates the federal Constitution and that the Respondent Banks, only one of which has dealt with Petitioners, are liable to thousands of depositors under a melange of theories and statutes because each bank has complied with Regulation Q.

Each Respondent Bank moved to dismiss all counts of the Amended Complaint. On July 16, 1974, for the reasons stated in a carefully researched thirty-three page Opinion, the District Court dismissed each of Petitioners' claims for failure to state a claim upon which relief could be granted.[3] Petitioners appealed the dismissal of each count to the United States Court of Appeals for the Sixth Circuit. In a per curiam Opinion filed on May 8, 1975, that Court affirmed the District Court's dismissal of each count of the Amended Complaint.

Petitioners now abandon the numerous strained claims they made below under the federal securities laws and federal antitrust laws, but ask this Court to review the Sixth Circuit's determination that Regulation Q is constitutional and that Respondent Banks' compliance therewith does not violate Petitioners' civil rights.

---

[3] By letter of July 16, 1974 to the parties the District Court invited Petitioners to further amend their Amended Complaint, if Petitioners believed that by such amendments they could state a claim for relief. Petitioners declined the Court's invitation.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. The Court of Appeals Correctly Decided That Regulation Q Constitutes Social and Economic Regulation Which Rationally Serves Legitimate Ends and Is Therefore Constitutional.

Petitioners' Amended Complaint asserted that Regulation Q, which prescribes no maximum interest rate for certificates of deposit of over $100,000 but maintains maximum rates for smaller deposits, deprives those having deposits of under $100,000 of equal protection of the laws. Both the District Court and Court of Appeals held that Regulation Q is in the area of social and economic regulation and is to be judged by the rational basis test. (App. A at 11a-12a; App. B at 42a.) Finding that the Regulation serves legitimate goals and that the separate classification of certificates of deposit in excess of $100,000 is rationally related to those goals, each court upheld the constitutionality of Regulation Q. (App. A at 12a-16a; App. B at 42a.)

Giving the most charitable reading to the Petition for Certiorari,[4] it may be said to argue that the Court of Appeals' decision to uphold Regulation Q conflicts with decisions of this Court in two respects. First, Petitioners apparently complain that Regulation Q contains a "suspect classification" based upon wealth which the Court of Appeals should have tested under a standard more stringent than the rational basis test. (Pet. at 5-6.) Second, Petitioners apparently urge that if Regulation Q is to be

[4] Respondent Banks have difficulty understanding Petitioners' reasoning as set forth in the Petition. Petitioners argue that wealth is a suspect classification and therefore the standard of *Richardson* v. *Belcher*, 404 U.S. 78 (1971), should apply. (Pet. at 7) *Richardson* v. *Belcher*, however, involved social legislation tested under the rational basis test and did not involve a suspect classification. *Id.* at 81.

measured by the rational basis test, then the Court of Appeals misapplied that test. (Pet. at 7.)

(A) Regulation Q Involves Neither a Suspect Classification Nor a Fundamental Right and Was Properly Tested Under the Rational Basis Test.

To support the claim that Regulation Q should be subject to stringent scrutiny, Petitioners start from the premise that Regulation Q contains a classification based upon wealth and then assert that "This Honorable Court has established that wealth is a suspect classification." (Pet. at 5.) Not only do Petitioners postulate an incorrect premise, they clearly misapprehend the holdings of this Court. In *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973), the Court noted:

> [T]his court has never heretofor held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny. . . . *Id.* at 29.

Far from holding that all legislative classifications involving some ability to pay are inherently suspect, this Court has often held that such legislation does not "touch upon . . . the suspect criteria of race, nationality, or alienage." *United States* v. *Kras*, 409 U.S. 434, 446 (1973); *e.g. Schlib* v. *Kuebel*, 404 U.S. 357 (1971). Petitioners misconstrue the decisions of this Court in claiming classifications involving wealth are suspect. The lower courts herein correctly applied the precedents of this Court by refusing to hold that wealth is a suspect classification.

Petitioners misinterpret several decisions of this Court in making the insupportable assertion that the Court has established wealth as a suspect classification. In the cases cited by Petitioners, this Court has held that a state may

not condition the exercise of a *fundamental right* upon the ability to pay. *McDonald* v. *Board of Election Commissioners*, 394 U.S. 802 (1969) (right to vote); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966) (right to vote); *Douglas* v. *California*, 372 U.S. 353 (1964) (right to counsel); *Shapiro* v. *Thomasson*, 394 U.S. 618 (1969) (right to travel between states).

The lower courts here determined that Regulation Q involves no fundamental right, but merely regulates the rate of return on deposits. (App. A at 11a; App. B at 42a.) Petitioners do not challenge this determination which is supported by several decisions of this Court. *E.g. United States* v. *Kras*, 409 U.S. 434, 446 (1973) (bankruptcy discharge not a fundamental right); *Schlib* v. *Kuebel*, 404 U.S. 357 (1971) (amount of bail returnable to criminal defendant not a fundamental right). Petitioners widely miss the mark in asserting that all legislative classifications based upon wealth are suspect and to be strictly scrutinized.

Furthermore, Petitioners start their analysis with the faulty premise that Regulation Q contains a classification based upon wealth. Regulation Q does prescribe different treatment for deposits of less than $100,000, but persons having bank deposits of less than $100,000 cannot reasonably be said to constitute a class which is capable of being defined in terms of wealth. Petitioners concede that their alleged class is a heterogeneous mix of "poor and middle-class citizens." (Pet. at 7.) In fact, even extremely wealthy persons must be among those having bank deposits of less than $100,000. The classification of Regulation Q does not single out indigents, does not divide rich and poor, and is in no sense based upon wealth at all. Indeed, Petitioners' allegedly disadvantaged class comprises a larger, more diverse, and more amorphous group than the class involved

in *San Antonio Independent School District* v. *Rodriguez*, which the Court found incapable of being identified "in customary equal protection terms." 411 U.S. 1, 19 (1973).[5]

Petitioners cannot show that in affirming the District Court's order the Court of Appeals deviated from this Court's decisions. Regulation Q does not classify persons on the basis of wealth, and even if it did, wealth is not a suspect classification. The lower courts properly determined that Regulation Q involves social and economic matters and, in accord with a long line of decisions by this Court, is to be tested under the rational basis test. *E.g. Richardson* v. *Belcher*, 404 U.S. 78, 84 (1971); *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970).

(B) The Court of Appeals Correctly Applied the Rational Basis Test.

In asking a review of the Court of Appeals decisions, Petitioners also urge that the rational basis test consists of two prongs—(1) that there be a rational basis for the regulation and (2) that it "not result in insidious (sic) discrimination." (Pet. at 7.) It is further urged that the lower courts herein erred by applying only the first prong of this test and ignoring the second.

Here, as is the case with their other contentions, it is the Petitioners, rather than the lower courts, who have misconstrued this Court's decisions. This Court has repeatedly defined the rational basis test in the following terms:

---

[5] Petitioners are not and cannot claim to be suffering an absolute deprivation of the desired benefit. They receive interest and are capable of investing their funds elsewhere at a higher rate of return. Without an absolute deprivation, there is no basis for invoking a more stringent standard in testing Regulation Q. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 19-20 (1973).

> The constitutional standard of the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. at 55.
>
> If the goals sought are legitimate and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment. *Richardson* v. *Belcher*, 404 U.S. at 84.
>
> If the classification has some "reasonable basis," it does not offend the Constitution. . . . *Dandridge* v. *Williams*, 397 U.S. at 485.

The foregoing standard was correctly applied by both the District Court and the Court of Appeals. (App. A at 11a-16a; App. B at 42a.)

Petitioners seize upon this Court's use of the phrase "invidious discrimination" in cases such as those cited above to suggest that some further examination of Regulation Q must be made. Petitioners offer no explanation as to the nature or scope of the additional inquiry which they seek.[6] A review of the decisions of this Court indicates that the Court has used invidious discrimination as a synonym for the rational basis test. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. at 17; *Schlib* v. *Kuebel*, 404 U.S. at 365. The phrase suggests no additional areas of judicial scrutiny in testing legislative classifications.

---

[6] Petitioners suggest in conclusory terms that the classification of Regulation Q is "arbitrary" and thereby becomes invidious. (Pet. at 7.) If the classification were truly arbitrary, it would necessarily lack rationality and thereby fail to satisfy the test as enunciated by this Court. Thus, Petitioners' own reasoning suggests that the phrase "invidious discrimination" is but a synonym for the rational basis test.

In this case the District Court made an exhaustive review of the history of the 1966 amendments to the Federal Reserve Act and of the Federal Reserve Board actions thereunder. (App. A at 8a-16a.) Without going into detail, the Court determined that Congress authorized the Federal Reserve Board to establish different rates of interest for different amounts on deposit so that competition between banks and thrift institutions could be controlled to protect the flow of funds to the home mortgage market, while at the same time permitting banks to compete for large denomination, money market certificates of deposit. (App. A at 12a-15a.) The District Court further found that Regulation Q's limitation of interest payable on deposits under $100,000 is rationally related to the legitimate goal of protecting the flow of funds to thrift institutions (App. A at 13a-14a), and that the removal of interest limitations for deposits of $100,000 or more rationally serves the legitimate goal of permitting banks to attract funds and thereby provide liquidity to businesses. (App. A at 14a-16a.)

The Court of Appeals concurred that Regulation Q is rationally supported in that it "prevents unfair competition for savings accounts and helps to regulate the country's monetary flow." (App. B at 42a.)

The lower court decisions clearly show that each court measured Regulation Q against the standards established by this Court and ascertained that it rationally served legitimate goals. Petitioners ignore that analysis, preferring instead to invoke catch phrases such as "insidious discrimination" which they do not even define. Petitioners offer no sound reason why this Court should review the Court of Appeals decision herein.

II. The Standard for Determining "State Action" Which Petitioners Suggest Was Rejected by This Court During Its Last Term and There Is No Reason for the Court Again to Review This Question.

Petitioners ask this Court to review the question whether Respondent Banks' compliance with federal Regulation Q constitutes state action under 42 U.S.C.A. § 1983. (Pet. at 3.) In logic, to ask the question is to answer it negatively. However, Petitioners' Amended Complaint does allege that conducting a banking business in accord with federal law constitutes state action. Respondent Banks urged the absence of state action as one ground for dismissing Petitioners' civil rights claim.

In upholding the dismissal of Petitioners' civil rights claim, the Court of Appeals found it unnecessary to decide whether compliance with federal law is an act of the State of Ohio. It held that since Regulation Q is constitutional, Petitioners could not allege deprivation of a constitutional right, a necessary element of a claim under the Civil Rights Act of 1871. (App. B at 42a.) In accordance with that holding, unless this Court is prepared to declare Regulation Q unconstitutional, no basis exists for considering the state action issue which Petitioners pose.

In addition, the standard for "state action" which Petitioners urge does not merit the consideration of this Court. Petitioners cannot show that the state of Ohio is a participant in the discrimination they allege. It is federal regulation which prevents Respondent Banks from paying higher interest on deposits of less than $100,000.[7] In their endeavor

---

[7] Unanimous authority establishes that acts of the federal government do not constitute "state action" for the purposes of 42 U.S.C.A. § 1983. *Williams* v. *Rogers*, 449 F.2d 513, 517 n.7 (8th Cir. 1971) (and cases cited therein); *Stinson* v. *Finch*, 317 F. Supp. 581, 585-86 (N.D. Ga. 1970).

to bridge the unbridgeable gulf between compliance with an exclusively federal regulation and the state action prerequisite to a Civil Rights Act claim, Petitioners claim that Respondent Banks are subject to extensive state regulation, and ask this Court to adopt a standard under which pervasive state regulation of an entity would make every act of that entity state action.

During its most recent term, in *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974), this Court refused to adopt the standard Petitioners now suggest:

> The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State. . . . Nor does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so. . . . [T]he inquiry must be whether there is a sufficiently close nexus between the State and the *challenged action* . . . so that the *action* . . . may be fairly treated as that of the State itself. *Id.* at 350-51. (Emphasis added.)

This Court and other courts have held previously that the presence of state regulation does not make every act of the regulated entity state action.

> However detailed this type of regulation may be in some particulars, it cannot be said to in any way foster or encourage racial discrimination. *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 176-77 (1972).

> It overlooks the essential point—that the State must be involved not simply with some activity of the institution . . . but with the activity that caused the injury. *Powe* v. *Miles*, 407 F.2d 73, 81 (2d Cir. 1968). *See also Jackson* v. *Norton-Childrens' Hospitals, Inc.*, 487 F.2d 502 (6th Cir. 1973); *Doe* v. *Bellin Mem. Hosp.*, 479 F.2d 756, 761 (7th Cir. 1973).

Thus, inasmuch as the standard for determining state action which Petitioners suggest has been thoroughly rejected,[8] there is no reason to review that standard again.

CONCLUSION

Viewing the considerations governing review on certiorari set forth in Rule 19 of the Supreme Court Rules, Petitioners have wholly failed to suggest any "special and important reasons" for granting the Petition. Apparently, the sole factor enumerated in Rule 19 upon which Petitioners rely is a claim that the decision of the Court of Appeals conflicts with applicable decisions of this Court. The preceding analysis indicates, however, that it is Petitioners, rather than the Court of Appeals, who misconstrue this Court's decisions. The Court of Appeals correctly perceived that this Court has not made wealth a suspect classification and that Regulation Q, concerning social and economic matters, is constitutional because it rationally serves legitimate goals. Likewise, there is no merit to reviewing the state action question Petitioners pose. The Court has already rejected the standard Petitioners suggest, and resolution of the question is unnecessary to disposition of this case in any event.

This case presents no new issues. The Court of Appeals applied often-enunciated and well-defined standards of this Court to dismiss a shotgun Amended Complaint which sought to hold six banks (including five banks who had never dealt with Petitioners) and others liable to thousands

---

[8] The cases upon which Petitioners principally rely were distinguished in *Jackson* on the basis that in those cases the state had actually fostered the challenged action. In this case, the state has nothing to do with the challenged action.

of depositors because these banks conduct their banking business in compliance with Regulation Q. The Petition should be denied.

Respectfully submitted,

/s/ JOHN A. LLOYD, JR.

JOHN A. LLOYD, JR.

Attorney for Respondent,
Central Trust Company
2900 DuBois Tower
Cincinnati, Ohio 45202

/s/ J. MACK SWIGERT

J. MACK SWIGERT

/s/ ROBERT G. STACHLER

ROBERT G. STACHLER

Attorneys for Respondent,
The First National Bank of Cincinnati
600 Dixie Terminal Building
Cincinnati, Ohio 45202

/s/ WILLIAM R. HARDY, JR.

WILLIAM R. HARDY, JR.

Attorney for Respondent,
Fifth Third Bank
1900 Fifth Third Center
Cincinnati, Ohio 45202

/s/ LOUIS F. GILLIGAN

LOUIS F. GILLIGAN

Attorney for Respondent,
Provident Bank
18th Floor Provident Tower
Cincinnati, Ohio 45202

/s/ THOMAS L. CONLAN

THOMAS L. CONLAN

Attorney for Respondent,
Southern Ohio Bank
1313 Provident Tower
Cincinnati, Ohio 45202

/s/ ROBERT J. IMBUS, JR.

ROBERT J. IMBUS, JR.

Attorney for Respondent,
North Side Bank and Trust Co.
711 Gwynne Building
Cincinnati, Ohio 45202

ADDENDUM OF CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

United States Constitution
Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV
§ 1

§ 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Reserve Act § 19(j)
12 U.S.C.A. § 371b (Supp. 1975)

§ 371b. Rate of interest on time deposits; payment of time deposits before maturity; waiver of notice requirements for withdrawal of savings deposits

The Board may from time to time, after consulting with the Board of Directors of the Federal Deposit Insurance

Corporation and the Federal Home Loan Bank Board, prescribe rules governing the payment and advertisement of interest on deposits, including limitations on the rates of interest which may be paid by member banks on time and savings deposits. The Board may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of member banks or their depositors, or according to such other reasonable bases as the Board may deem desirable in the public interest. No member bank shall pay any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the said Board, or waive any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement: *Provided*, That the provisions of this section shall not apply to any deposit which is payable only at an office of a member bank located outside of the States of the United States and the District of Columbia. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this paragraph shall not apply to the rate of interest which may be paid by member banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

REGULATION Q
12 C.F.R. § 217.7

§ 217.7 Maximum rates of interest payable by member banks on time and savings deposits.

Pursuant to section 19 of the Federal Reserve Act and § 217.3 hereof, the Board of Governors of the Federal Reserve System hereby prescribes the following maximum

rates [1] of interest per annum payable by member bank of the Federal Reserve System on time and savings deposits:

(a) *Time deposits of $100,000 or more.* There is no maximum rate of interest presently prescribed on any time deposit of $100,000 or more.

(b) *Time deposits of less than $100,000.* (1) Except as provided in paragraphs (a) and (d) and subparagraphs (2) and (3) of this paragraph, no member bank shall pay interest on any time deposit at a rate in excess of the applicable rate under the following schedule:

Maturity:	*Maximum percent*
30 d or more but less than 90 d	5
90 d or more but less than 1 yr	5½
1 yr or more but less than 30 mo	6
30 mo or more	6½

(2) Member banks may pay interest on any time deposit of $1,000 or more, with a maturity of four years or more, at a rate not to exceed 7¼ percent.

(3) Investment Certificates—Member banks may pay interest on any time deposit of $1,000 or more, with a maturity of six years or more, at a rate not to exceed 7½ percent.

(c) *Savings deposits.* No member bank shall pay interest at a rate in excess of 5 percent on any savings deposit including savings deposits that are subject to negotiable orders of withdrawal, the issuance of which is authorized by Federal law.

(d) *Governmental unit time deposits of less than $100,000.* (1) Except as provided in paragraph (a) of this section, no member bank shall pay interest on any time deposit which consists of funds deposited to the credit of, or in which the entire beneficial interest is held by, the United States, any State of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico,

the Virgin Islands, American Samoa, Guam, or political subdivision thereof, at a rate in excess of the highest of any of the permissible rates that can be paid on time deposits under $100,000 by any Federally insured commercial bank, mutual savings bank or savings and loan institution.[2]

[Reg. Q, 38 FR 29461, Oct. 25, 1973, as amended at 38 FR 34457, Dec. 14, 1973; 39 FR 43056, Dec. 10, 1974; 39 FR 43618, Dec. 17, 1974]

Civil Rights Act of 1871
42 U.S.C.A. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

AFFIDAVIT

STATE OF OHIO }
COUNTY OF HAMILTON } ss:

The undersigned, being first duly sworn, deposes and says that he is attorney of record for Respondent, The First National Bank of Cincinnati, and that on behalf of that bank and each other Respondent Bank herein, he served on August 28, 1975, three copies of the foregoing Brief of the Respondent Banks in Opposition to the Petition for Certiorari upon each other party separately represented in these proceedings by depositing the same in a United States mail box, with first-class postage prepaid, addressed to counsel of record for each such party, respectively, at the respective post office addresses of such coun-

sel. Three copies were similarly served on August 28, 1975, upon the Solicitor General, Department of Justice, Washington, D.C. 20530.

/s/ ROBERT G. STACHLER

ROBERT G. STACHLER

Sworn to and subscribed before me, a notary public for the State of Ohio, on this 28th day of August, 1975.

/s/ TIMOTHY E. HOBERG

Notary Public

My commission does not expire.